

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MORRIS WEATHERSPOON,
#471817,

Plaintiff,

v.

DINSA, et al.,

Defendants.

CIVIL ACTION NO. 14-12756

DISTRICT JUDGE LAURIE J. MICHELSON

MAGISTRATE JUDGE R. STEVEN WHALEN

ORDER

Plaintiff Morris Weatherspoon, a *pro se* prison inmate in this action filed under 42 U.S.C. § 1983, has filed the following motions:

- Motion for Appointment of Counsel [Doc. #64].
- Motion to “Recognize and Consider,” construed as motion to file untimely notice of appeal [Doc. #65].
- Motion for Alternative Service [Doc. #66].
- Motion for Expedited Consideration of Motion for Service [Doc. #67].

A. Untimely Appeal [Doc. #65]

Plaintiff alleges deliberate indifference to his serious medical needs, in violation of the Eighth Amendment. All of the Defendants have been dismissed without prejudice, for failure to exhaust administrative remedies, except for Defendant Dr. Jindell, who has not been served.

The Court entered its Opinion and Order of dismissal on September 25, 2015; Plaintiff filed a Notice of Appeal October 30, 2015, outside the 30-day limit under Fed.R.App.P. 4(a)(1). However, because Defendant Jindell has not been served, and the complaint has not been adjudicated as to him, there is no final judgment on the merits disposing of all Defendants and all issues, as required under 28 U.S.C. § 1291. Therefore, construing Plaintiff's motion to "recognize and consider" extenuating circumstances [Doc. #65] as a motion to extend the time for filing a Notice of Appeal, the motion is DENIED AS MOOT.

B. Alternative Service and Expedited Consideration [Doc. #66 and #67]

Plaintiff asks that the United States Marshal be ordered to serve Defendant Jindell. He already has. *See* Doc. #36. Apparently, Dr. Jindell is no longer employed with the Michigan Department of Corrections ["MDOC"]. On October 26, 2015, the Court entered a second order for the MDOC to provide Dr. Jindell's last known address to the U.S. Marshal, and for the Marshal to attempt service [Doc. #60]. Therefore, Plaintiff's motions regarding service [Doc. #66 and Doc. #67] are DENIED AS MOOT.

C. Request for Counsel [Doc. #64]

In its September 25, 2015 Opinion and Order, the Court denied Plaintiff's previous request for counsel without prejudice. At this point in the proceedings, Plaintiff's request is still premature, in that Defendant Jindell has not yet been served. His motion for appointment of counsel [Doc. #64] is DENIED WITHOUT PREJUDICE.

IT IS SO ORDERED.

s/ R. Steven Whalen
R. STEVEN WHALEN
UNITED STATES MAGISTRATE JUDGE

Dated: November 9, 2015

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was sent to parties of record on November 9, 2015, electronically and/or by U.S. mail.

s/Carolyn M. Ciesla
Case Manager to the
Honorable R. Steven Whalen